

# **Exhibit A**

Proceedings - 10/19/92

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CRIMINAL TERM : PART 1

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DERRICK HAMILTON,

Defendant(s)

-----X  
Indictment No. 142/91  
Motion October 20, 1992

B E F O R E :

HONORABLE EDWARD G. RAPPAPORT, Justice  
(Appearances same as previously noted.)  
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Brooklyn, New York.

THE CLERK: This is 142/91, Derrick  
Hamilton.

MR. RILEY: John Riley for the People.  
R-I-L-E-Y.

THE COURT: This is a 330/440? What kind  
of motion is this?

MR. SHEINBERG: Defendant has made a  
motion pursuant to 330.30 prior to sentencing,  
to set aside the verdict.

THE COURT: That can only be based on  
things that happened at the trial.

Brooklyn, New York

October 20, 1992.

THE COURT: Inasmuch as this is a hearing and I'm able to handle this and inasmuch as Miss Gutmann is trying another case, we're going to call her out of turn to deal with this sharp issue in this case.

One of the sharp issues-- Does someone want to swear the witness?

THE WITNESS: Anne G-U-T-M-A-N-N.

Assistant District Attorney, Kings County  
District Attorney's office.

DIRECT EXAMINATION

BY MR. RILEY:

Q How long have you been an Assistant District Attorney in the Kings County District Attorney's office?

A Six years.

Q And did there come a time in your employment at the District Attorney's office that you were assigned to try the case of the People of the New York versus Derrick Hamilton?

A Yes.

Q Do you recall on what dates that case was tried?

Gutmann - Direct

A Jury selection began on July 6th. Continued on July 8th, we did opening statements and testimony was taken on July 9th. Was when the trial began.

Q Do you recall when the verdict was?

A July 17.

THE COURT: Go ahead. July 17 you got the verdict.

Q Now, now, prior to the commencement of the trial did you turn over what's commonly referred to as Rosario material?

A Yes, I did.

Q Included in that Rosario material was a spiral memo book kept by Detective Frank Delouisa turned over?

A Yes, it was.

Q And that would have been turned over to Mr. Sheinberg?

A Yes, it was.

Q He was counsel for the defendant during that trial?

A Yes, he was.

MR. RILEY: May I show the witness what has been previously as Defense Exhibit A.

THE COURT: Yes.

(Handing).

1 Gutmann - Direct

2 Q Miss Gutmann, do you recognize what's been  
3 previously received in evidence as Defense Exhibit A?

4 A Yes, I do.

5 Q What do you recognize it as?

6 A This is Detective Delouisa's memo book or  
7 spiral.

8 Q Is that the form that you turned over to  
9 Mr. Sheinberg?

10 A Yes, it is.

11 THE COURT: Other than the fact that it  
12 has the yellow highlights?

13 THE WITNESS: And the pink highlight on  
14 the front.

15 THE COURT: Other than that it's the form  
16 that he's talking about.

17 THE WITNESS: Yes.

18 Q Now, at some time during the trial do you  
19 recall having a conversation, or Mr. Sheinberg asking you  
20 some questions with respect to certain pages in that  
21 exhibit?

22 A Yes.

23 Q What pages did he ask you the question about?

24 A There are approximately in the middle of this  
25 packet on the bottom is written Defendant's A in evidence.

1 Gutmann - Direct

2 THE COURT: With the yellow highlight  
3 green highlight.

4 THE WITNESS: Yes.

5 Q Just so we're clear talking for the record, how  
6 does the page you're referring to begin?

7 A Karen Smith.

8 Q Now, what conversation did you have with  
9 Mr. Sheinberg during the trial regarding the pages you  
10 just talked about?

11 A Mr. Sheinberg asked me to the effect of was  
12 this Jewel Smith?

13 And I said I don't know.

14 Q Do you remember when that happened,  
15 specifically during the trial?

16 A No, I don't.

17 Q Did Mr. Sheinberg at any time or-- Withdrawn.

18 Was that the only conversation you had  
19 with Mr. Sheinberg regarding those two pages?

20 A Yes.

21 Q Do you recall at any other time Mr. Sheinberg  
22 asking you whether Karen Smith was Jewel Smith?

23 A No. I only recall that one conversation.

24 Q So there was no other conversation regarding  
25 those two pages with Mr. Sheinberg to the best of your

1 Gutmann - Direct

2 recollection?

3 A No.

4 THE COURT: Excuse me.

5 (Pause).

6 Go ahead.

7 Q When you responded to Mr. Sheinberg's question  
8 whether Karen Smith-- I'm sorry what exactly do you  
9 remember Mr. Sheinberg's question to be?

10 A Whether the person to the, something to the  
11 effect of whether the person named, mentioned here is  
12 Karen Smith was Jewel Smith the witness in the case.

13 Q And at that time did you know, again at the  
14 time Mr. Sheinberg asked you the question, did you know  
15 who Karen Smith was?

16 A I did not know.

17 Q So your answer then to Mr. Sheinberg was  
18 accurate; is that correct?

19 A Yes.

20 THE COURT: Do you recall at the trial--  
21 you were at the trial. I guess we can look at  
22 the transcript if we have to, did anybody ever  
23 ask either you or Mr. Sheinberg, or the Court  
24 for that matter, although the Court was unaware  
25 of the memo book, ever ask Jewel Smith "Are you

Gutmann - Direct

also known as Karen Smith?"

Was that question ever asked to your recollection?

THE WITNESS: No.

THE COURT: That seems to have been a simplistic way of handling this; you have the record in front of you, say "Were you ever known as Karen Smith? "

Go ahead. Next question.

MR. RILEY: I have no further questions.

THE COURT: Cross?

MR. RILEY: I'm sorry. I have one other question.

THE COURT: No cross yet.

Q To the best of your knowledge was Detective Delouisa retired during the trial of this case?

A No.

Q Do you know what precinct he was assigned to at the time?

A 79th Precinct.

THE COURT: How come he wasn't called as a witness at the trial?

THE WITNESS: He did not respond to the scene; all he did--



1 Gutmann - Direct

2 THE COURT: Nothing you thought was  
3 material?

4 THE WITNESS: Correct.

5 MR. RILEY: Nothing further.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. KIRSCH:

9 Q Miss Gutmann, regarding Detective Delouisa, was  
10 he available during the period of the trial?

11 A Yes.

12 Q He was working in the 79th Precinct?

13 A I know that he was on, working on a case and I  
14 believe he might have been assigned to the office at that  
15 time, but he was available.

16 Q He was not out of the state or out of the city?

17 A No.

18 Q Was he the arresting officer in this case?

19 A I believe technically on the on-line booking I  
20 believe it was Detective Scarcella.

21 Q Detective Delouisa was actually the person who  
22 took Derrick Hamilton into custody?

23 A No Detective Scarcella was.

24 Q Do you recall when you turned over this Rosario  
25 material to Mr. Sheinberg?

1 Gutmann - Cross

2 THE COURT: Is that relevant? I mean  
3 what difference does it make when he got it?  
4 He confronted her with it at the time. She  
5 admits that he says it.

6 He said she says no it, is not the same.  
7 She said, I said I didn't know if it was the  
8 same.

9 MR. KIRSCH: I withdraw the question.

10 Q Do you recall a conversation with Mr. Sheinberg  
11 shortly, at the conclusion of Jewel Smith's testimony, as  
12 to whether or not he asked you if this Karen Smith was  
13 Jewel Smith?

14 A I don't recall when-- I've spoken about the  
15 conversation I recall on direct. I don't know when that  
16 conversation occurred.

17 Q And you didn't tell him no, that wasn't the  
18 same person?

19 A No, I didn't.

20 Q Now, this memo book entry, that was taken--  
21 that was made at the time of the initial contact with the  
22 witness? Is that correct? At the time of the incident?

23 THE COURT: Well, I guess anybody who  
24 looks at that can figure that out. You didn't  
25 make it, did you?

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Gutmann - Cross

THE WITNESS: I didn't make it.

THE COURT: What's the date on it? Is there a date.

THE WITNESS: January 4th, 1991.

THE WITNESS: Which was the date of the murder?

THE COURT: So then probably it was taken on the day of the murder.

Q Do you know now if Karen Smith is the same person as Jewel Smith?

A I know about what this memo book entry refers to, yes.

THE COURT: The memo book says it's the same.

THE WITNESS: No.

I called Detective Delouisa after I received the papers in this case.

THE COURT: And?

THE WITNESS: And I asked him.

THE COURT: What did he say.

THE WITNESS: He said this was Jewel Smith.

THE COURT: So, in other words, anybody had called the detective could have found that

Gutmann - Cross

out and maybe someone asked Jewel Smith the witness they could have found that out. Sounds like there were two sources to find that out. The third source Miss Gutmann wasn't a good source, I guess.

Q Did you ever tell Mr. Sheinberg that Detective Delouisa was not available?

A No.

THE COURT: Anything else.

MR. KIRSCH: I have nothing further.

THE COURT: Redirect.

MR. RILEY: I have to clear up one thing.

REDIRECT EXAMINATION

BY MR. RILEY:

Q You said to the best Detective Scarcella was technically the arresting officer; is that correct?

A Yes.

Q Would you take a look at that document which is the on-line booking and see if that refreshes your recollection as to who was the actual arresting officer?

A Was Detective Delouisa.

MR. RILEY: Nothing further.

THE COURT: Do you have any recross on